

SPONSORSHIP AGREEMENT BETWEEN THE CITY OF TEMPE, THE TEMPE CONVENTION AND
VISITORS BUREAU AND USA TRIATHLON

THIS AGREEMENT (“Agreement”) is made and entered into by and between USA Triathlon (USAT) a Colorado corporation, the Tempe Convention & Visitors Bureau (TCVB), and the City of Tempe (Tempe), an Arizona municipal corporation.

RECITALS

- A. WHEREAS, USTA desires to hold the 2013 and 2014 USA Triathlon Collegiate National Championships (EVENT) in Tempe;
- B. WHEREAS, TCVB and Tempe (collectively, HOST) desire to host the 2013 and 2014 Events;
- C. WHEREAS, USTA, TCVB and Tempe desire to enter into this Agreement to govern the staging of the 2013 and 2014 Events;

NOW, THEREFORE, in consideration of the premises and mutual covenants and conditions hereinafter set forth, and intending to be legally bound, the parties agree as follows:

- 1. **EVENT:** The EVENT will consist of the following Collegiate National Championship (1.5k swim, 40k bike and 10k run); Collegiate Draft-Legal Race (750m swim, 20k bike and 5k run); and, Mixed Team Relay (teams of four: each member will complete 250m swim, 5k bike and 1.2k run). USAT may notify HOST of modifications to distances for each aspect of the EVENT. USAT and HOST will mutually agree upon the EVENT schedule.
- 2. **EVENT DATE:** 2013 EVENT – April 12-13, 2014 EVENT – Date will be mutually agreed upon between HOST and USAT.
- 3. **EVENT MANAGEMENT:** USAT will oversee production and management of the EVENT. USAT’s National Events Director will serve as the EVENT director and will assign duties as needed. USAT shall cooperate with the HOST on the production of the EVENT, but HOST shall not enter into any third party agreement with an event management firm without USAT’s written approval.
- 4. **HOTEL NEEDS:** USAT reserves the right to negotiate and secure all hotel needs including, but not limited to, host hotel designation, overflow hotels, guest rooms, meeting and banquet rooms. USAT also reserves the right to use a housing service to secure and manage hotel needs for the EVENT.
- 5. **EVENT SPONSORSHIP:** Total sponsorship revenue, including health & fitness expo, secured by HOST will be split 75/25 between HOST (75%) and USAT (25%). HOST agrees to make payment to USAT – twenty-five percent of the negotiated dollar amount – no later than 15 days after the event. All sponsorship revenue subject to sharing will be net of any direct costs associated with delivery of services associated with the applicable sponsorship commitments. HOST must communicate to USAT potential sponsors and must get written approval from USAT prior to signing any sponsor or partnership agreements. USAT national sponsors must be used at the EVENT. HOST may not sign any agreements with sponsors that may conflict with USAT sponsors. USAT will provide a list of sponsors to HOST. 100% of total sponsorship revenue secured by USAT will be retained by USAT.
- 6. **HOST BENEFITS:** USAT shall provide HOST with the following benefits of the EVENT:

- a. HOST shall be recognized as the official Host of the EVENT. HOST may use this designation in any promotional materials, print media, radio and television. HOST must use the USAT logo and the EVENT logo (USAT Logos) in promotional material, print media, radio and television.
- b. HOST shall receive Host benefits to include but not limited to:
 - i. HOST shall receive one full-page color advertisement in the official program for the EVENT, which shall be submitted to TCVB for approval before publication.
 - ii. HOST logo should appear on all materials generated for the EVENT including, but not limited to:
 1. Official Race Program
 2. Advertisements
 3. USAT Website
 4. Race Email Updates
 5. Athlete T-Shirts (Event Sponsor)

USAT has final approval rights of all USAT Logos on race related materials and the HOST shall not modify these USAT Logos without written permission from USAT.

- iii. A maximum of ten (10) banners, to be provided by HOST, will be displayed at EVENT site location. Location shall be determined cooperatively between USAT and HOST. HOST shall not sell or designate banner rights to a third party without USAT approval.
- iv. Ten (10) public address announcements during the EVENT to be given to USAT for approval no later than seven (7) days prior to the EVENT.
- v. One (1) exposition booth at the EVENT exposition.
- vi. Two (2) inserts into the athlete bags to be approved by USAT. Inserts must be provided to USAT designated location no later than seven (7) days before the EVENT.
- vii. HOST has the following options:
 1. Designate one (1) representative to sing the National Anthem at the beginning of the EVENT.
 2. Appoint one (1) representative to act as the official EVENT starter.
 3. Appoint one (1) representative to present awards to athletes at the EVENT awards ceremony.
- viii. Two (2) complimentary race entries. (Mutually agreed upon)

7. **HOST FEE OBLIGATIONS:** In anticipation of the benefits to HOST associated with hosting the EVENT, HOST agrees to pay USAT as follows:

- a. 2013 EVENT: TCVB shall pay a Host Sponsorship Fee (FEE) of fifteen thousand dollars (\$15,000), payable to USA Triathlon at 5825 Delmonico Drive, Suite 200, Colorado Springs, CO 80919, on the following schedule:

- i. \$15,000 from the TCVB on or before January 1, 2013.
- ii. In the event that the entire FEE is not paid to USAT on or before January 1, 2013, TCVB agrees to pay a late payment charge equal to one and a half percent per month (1.5%) of the unpaid balance for each month payment is past due. Non-payment of the entire FEE on or before January 1, 2013 shall be deemed a material breach subject to the Termination provisions set forth in paragraph 12 of this Agreement.

For the 2014 EVENT, HOST shall provide USAT with the following as Host of the EVENT.

- b. 2014 EVENT: TCVB shall pay a Host Sponsorship Fee (FEE) of fifteen thousand dollars (\$15,000), payable to USA Triathlon at 5825 Delmonico Drive, Suite 200, Colorado Springs, CO 80919, on the following schedule:
 - i. \$15,000 from the TCVB on or before January 1, 2014.
 - ii. In the event that the entire FEE is not paid to USAT on or before January 1, 2014, TCVB agrees to pay a late payment charge equal to one and a half percent per month (1.5%) of the unpaid balance for each month payment is past due. Non-payment of the entire FEE on or before January 1, 2014, shall be deemed a material breach subject to the Termination provisions set forth in paragraph 12 of this Agreement.

- 8. **HOST LOGISTICAL SUPPORT AND EXPENSE OBLIGATIONS:** In addition to the obligations set forth in paragraph 7 above, HOST agrees to underwrite certain costs and logistics as follows:

From TCVB :

- a. TCVB will pay for all on duty medical, fire/paramedic and police costs, traffic operations and city services associated with the April 13, 2013 Collegiate National Championships course and event reasonable and necessary to conduct the event in a safe manner. Tempe and USAT shall agree as to the police, emergency, or fire protection costs and support required to ensure that the EVENT is conducted in a safe manner. Tempe understands and agrees all city services, medical, fire/paramedic and police personnel will be considered “on duty” for the EVENT and will be excluded under USAT’s general liability insurance coverage for liability related to the 2013 EVENT and 2014 EVENT.
- b. Apply for all reasonable and necessary permits for Collegiate National Championship
- c. Pay all reasonable and necessary logistics cost for the Collegiate National Championship.
- d. Pay all reasonable and necessary costs associated with park maintenance and upkeep for the Collegiate National Championship.
- e. TCVB shall underwrite the following USAT travel expenses for the EVENT each year:

Pre-Event Logistics Site Visit, one (1) per year:

- i. Rental Car – One (1) mid-size vehicle
 - ii. Hotel – Two (2) rooms with double beds, non-smoking
 - iii. Airfare – Two (2) roundtrip tickets from Colorado Springs, CO to Phoenix, AZ
- f. Provide options for meeting rooms and banquet space for the EVENT to conduct, but not limited to, packet & goodie bag stuffing, athlete packet pick up, exposition, pasta party, athlete briefings and awards ceremony.

From TCVB and Tempe:

- g. All reasonable and necessary volunteer support for the EVENT. No fewer than two hundred (200) volunteers will be required. USAT will define volunteer needs and roles, and will designate a USAT staff member to work in partnership with local volunteer coordinator. USAT Volunteer Coordinator and contact information will be provided to the TCVB by no later than February 28, 2013. If USAT complies with the deadlines above, and HOST fails to provide adequate volunteer support by April 1, 2013-2014, TCVB agrees to pay USAT \$5,000.00 to cover all necessary volunteer support.

9. From USAT

- a. USAT agrees to pay for all on duty medical, fire/paramedic and police costs, traffic operations and city services associated with the April 12, 2013 USA Triathlon Collegiate Draft Legal Race that are reasonable and necessary to conduct the event in a safe manner. Tempe and USAT shall agree as to the police, emergency, or fire protection costs and support required to ensure that the EVENT is conducted in a safe manner. Tempe understands and agrees all city services, medical, fire/paramedic and police personnel will be considered “on duty” for the EVENT and will be excluded under USAT’s general liability insurance coverage for liability related to the 2013 EVENT and 2014 EVENT.
- b. USAT agrees to pay for all on duty medical, fire/paramedic and police costs, traffic operations and city services associated with the April 13, 2013 USA Triathlon Mixed Team Relay that are reasonable and necessary to conduct the event in a safe manner. Tempe and USAT shall agree as to the police, emergency, or fire protection costs and support required to ensure that the EVENT is conducted in a safe manner. Tempe understands and agrees all city services, medical, fire/paramedic and police personnel will be considered “on duty” for the EVENT and will be excluded under USAT’s general liability insurance coverage for liability related to the 2013 EVENT and 2014 EVENT.
- c. Apply for all reasonable and necessary permits for the Collegiate Draft Legal Race and the Mixed Team Relay events.
- d. All reasonable and necessary logistics cost for the Collegiate Draft Legal Race and the Mixed Team Relay events.
- e. All reasonable and necessary costs associated with park maintenance and upkeep for all the Collegiate Draft Legal Race and the Mixed Team Relay.

10. **USAT ENTITLEMENTS:** USAT shall retain one hundred percent (100%) of the proceeds, after paying all applicable taxes, from the following:
- a. EVENT entry fees
 - b. Sale of exposition space
 - c. EVENT merchandise at expo
 - d. Ticket sales for athlete meals
11. **REFUND or CANCELLATION:**
- a. **Cancellation for Cause** – USAT or the HOST may cancel the EVENT in either 2013 or 2014 due to inclement weather, Acts of God or other cause beyond the control of HOST or USAT. If a **Cancellation for Cause** occurs in 2013, this Agreement will automatically be extended to 2014 unless otherwise stated by USAT.
 - b. **Unfounded Cancellation** – Should either 2013 or 2014 be cancelled by USAT, other than for cause listed in 10a, which shall be considered an unfounded cancellation, this entire Agreement becomes void, except that USAT shall be obligated to return all payments made by HOST under paragraph 7 should USAT make an unfounded cancellation. If HOST makes an unfounded cancellation, HOST is not entitled to a refund of any fees. Unfounded cancellation of the 2013 EVENT by the HOST shall also serve as an unfounded cancellation of the 2014 EVENT. HOST agrees that USAT will retain all payments made as liquidated damages up to the point of notice by the HOST of an unfounded cancellation. HOST agrees to pay USAT \$5,000.00 for any unfounded cancellation made by HOST within six (6) months of the 2013 EVENT or 2014 EVENT.
12. **NO PARTNERSHIP OR AGENCY RELATIONSHIPS:** This Agreement does not create a partnership, joint venture, agency, employee/employer or any similar relationship between or among USAT, HOST, their employees, agents and contracting parties, nor make any of them a legal representative of any of the others for any purpose whatsoever. Except for the specific terms of this Agreement, neither party to this Agreement intends this Agreement to grant or confer by implication or otherwise, any obligation, right or authority to assume or create any obligation or responsibility, express or implied, on behalf of the other. Neither this Agreement, nor the use of the licensed marks by the HOST, shall create, or be deemed to create any responsibility or liability on the part of either party to this agreement for the acts and/or omissions of the other. HOST and USAT agree that each shall be fully responsible for its own contractual arrangements and obligations with third parties.
13. **SPECIAL EVENTS APPLICATION:** USAT shall comply with the standard permit requirements as set forth in the application for a special event permit, the permit itself and as decided at the Special Event Task Force meeting.
14. **DEFAULT:** In the event of a dispute between the parties to this Agreement regarding a provision of this Agreement, a party's performance of its obligations as stated in this Agreement or any other matter governed by the terms of this Agreement, the parties will meet in good faith to attempt to resolve the dispute. If such a meeting fails to resolve the dispute, then the parties agree that such dispute may be resolved through mediation, if mediation is agreed to by the disputing parties. The disputing parties shall mutually agree upon the services of One (1) mediator whose fees and expenses shall be borne equally by the disputing parties. If the dispute is not resolved within a reasonable time, the disputing parties shall be free to use other remedies available to them to resolve the dispute.

If any party or parties should default in the performance of their respective obligations under this Agreement, the party or parties in default shall have a reasonable time, the amount of which shall be mutually agreed to by the affected parties, in which to cure the default. If a cure is not made, the party or parties not in default shall be entitled to remedy the default using any right or remedy at law or equity which would otherwise be available to such party or parties not in default, including bringing any suit or proceeding to enforce the provisions of this Agreement. The prevailing party or parties shall be entitled to their reasonable attorney fees and costs incurred with such an action.

15. **TERMINATION:** Any party may terminate this Agreement in whole or in part upon mutual agreement of the parties. Unless mutually terminated as provided for in this Agreement, any party or parties may terminate this Agreement by written notice to the other parties within sixty (60) days after the initial Triathlon of April 11, 2013 or within sixty (60) days after the holding of the Triathlon in any subsequent years.
16. **BEST EFFORTS:** USAT and the HOST agree that each will exert best efforts to fulfill the goals and requirements of this Agreement. In so doing, USAT will avoid event scheduling conflicts, and will advertise and promote the EVENT among its members.
17. **CONFIDENTIALITY:** USAT and the HOST agree to maintain confidentiality of all information pertaining to business, sponsors, vendors and activities under this Agreement except for disclosures required by legal process, subpoena, and court order of Arizona law.
18. **GOVERNING LAW AND DISPUTE RESOLUTION:** This Agreement shall be governed by the laws of the State of Arizona and any litigation between the parties regarding the Agreement or the performance of any of the obligations contained in this Agreement shall be initiated in Maricopa County, Arizona.
19. **NOTICES:** Any notice, demand or request provided for in this Agreement shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by registered or certified mail, return receipt requested, pre-paid to the party as specified below:

If to USAT.:

USAT

If to Tempe Convention &
Visitors Bureau:

TCVB
51 West Third Street, Suite 105
Tempe, AZ 85281

If to the City of Tempe:

Tempe
Community Services
Director
3500 S. Rural Road
Tempe, AZ 85282

20. **ENTIRE AGREEMENT HERE AND MODIFICATION:** This Agreement represents the entire agreement between the parties. No modification or amendment of this Agreement or waiver of any provision of this Agreement shall be valid unless set forth in writing and signed by the parties to this Agreement. HOST shall not modify nor knowingly permit anyone, including participant athletes, to

modify and USAT documents, including, but not limited to the athlete's participant waiver and release form.

21. **SEVERABILITY:** If any provision of this Agreement shall be unlawful, void or for any reason unenforceable, then that provision shall be deemed severable from this Agreement and shall not affect the validity and enforceability of any remaining provisions.
22. **HEADINGS:** The sections and other headings contained in this Agreement are intended solely for convenience of reference and are not intended to be part of or affect the meaning or interpretation of this Agreement.
23. **COMPLIANCE WITH LAWS:** USA Triathlon in the performance of its activities under this Agreement shall comply with all applicable laws, statutes, ordinances, permits, rules and regulations relating to those activities.
24. **WAIVER:** No waiver, whether written or tacit, of any remedy or provision of this Agreement shall be deemed to constitute a waiver of any other provision hereof or a permanent waiver of the provision concerned, unless otherwise stated in writing by the party to be bound thereby.
25. **ADOPTION BY MAYOR AND COUNCIL; AUTHORITY TO EXECUTE MINOR AMENDMENTS:** This Agreement is subject to adoption by Tempe's Mayor and Council. Upon execution of this Agreement, the Mayor and Council authorize the City's Community Services Director to sign other documents or amendments of this Agreement as may be necessary to effectuate this Agreement and further authorize the Director to act upon any other matters not presently contemplated but which may arise and require Tempe's action in order to effectuate the purpose of this Agreement.
26. **CONFLICT OF INTEREST:** This Agreement is subject to cancellation under the provisions of Arizona Revised Statutes, Section 38-511.

DATED this ____ day of _____, 2012.

SIGNATURES:

TEMPE CONVENTION AND VISITORS
BUREAU

USA TRIATHLON

By: _____

By: _____

Its: _____

Its: _____

CITY OF TEMPE, an Arizona municipal
corporation

By: _____

Mark Mitchell
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney